

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of the Complaint Against)
Kansas Power & Light (Evergy)) DOCKET No. 20-EKME-397-COM
By William J. Flohrs)

MOTION FOR PROTECTIVE ORDER AND DISCOVERY ORDER

COMES NOW, the Complainant and petitions the Kansas Corporation Commission for intervention in the above captioned case.

WHEREFORE, Complainant respectfully requests the Commission grant its Petition for Intervention and Motion for Protective Order and Discovery Order in this Docket. In support of its petition and motion, Complainant states and alleges as follows:

1. Pleadings, testimony, exhibits and discovery responses may contain confidential information. Complainant is requesting the Commission issue a Protective Order and Discovery Order in this docket to allow Complainant and its consultant access to the full information contained in this filing.
2. On September 14th, the Kansas Corporate Commission (KCC) filed a "Staff's Redacted Response to Complainant's Request for Documents" in the above case. In the report, Staff provided several questions that were asked by the Staff of KCC, and the responses provided by Evergy.

- a. In Question 10, staff asks Evergy to provide Evergy's vegetation management policy and a copy of the procedures referenced by NERC. Evergy claims that these documents are "CONFIDENTIAL". Complainant requests that this document be provided to the Complainant for review as part of the Discovery process in the above captioned case. (See Exhibit #1)
3. Evergy has not shown good cause to keep these documents CONFIDENTIAL.

Memorandum in Support

The Complainant has shown good cause in requesting documents in Evergy's control. Upon a showing of good cause, the Commission has discretion to issue a protective order that forbids a party from disclosing to other persons specific information acquired in discovery. (1.)

The burden of showing good cause falls at all times on the party seeking protection. (2.)

For civil cases, this discretion is articulated in Federal Rule of Civil Procedure 26(c)(1)(A):

"The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, . . . forbidding the disclosure of discovery" (3.)

The rule permits the court to issue a protective order only if the parties cannot accomplish the goals of the order by private agreement: "The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action." (4.)

1. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 785-86 (3d Cir. 1994) (describing the discretion as inherent power).
2. Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1130 (9th Cir. 2003) ("A party asserting good cause bears the burden, for each particular document it seeks to protect, of showing that specific prejudice or harm will result if no protective order is granted."); Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786-87 (3d Cir. 1994) ("The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order."); Miller v. City of Boston, 549 F. Supp. 2d 140, 141 (D. Mass. 2008) ("The proponent of a Protective Order bears the burden of establishing 'good cause' for its continuation," footnote omitted.); see also Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1122 (3d Cir. 1986) ("It is correct that the burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the protective order; any other conclusion would turn Rule 26(c) on its head.").
3. See also In re Alexander Grant & Co. Litig., 820 F.2d 352, 355 (11th Cir. 1987); Joy v. North, 692 F.2d 880, 893 (2d Cir. 1982); MCL 4th § 11.432, at 66-67 (Federal Judicial Center 2004).
4. Fed. R. Civ. P. 26(c)(1); see Forest Prods. Northwest, Inc. v. United States, 453 F.3d 1355, 1361 (Fed. Cir. 2006) (holding that the district court was correct to deny a motion for a protective order because the mover "neither conferred with the [other party] to resolve the dispute nor demonstrated good cause").

Conclusion

Complainant requests that the Kansas Corporation Commission (KCC) provide a copy of the documents that Evergy has requested be CONFIDENTIAL.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March 2021, the foregoing **MOTION FOR PROTECTIVE ORDER AND DISCOVERY ORDER** was sent via email to the parties listed below:

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Evergy Kansas Metro
Case Name: 2020 Flohrs Complaint
Case Number: 20-EKME-397-COM

Response to Stringer Tim Interrogatories - KCC_20200811
Date of Response: 8/19/2020

Question:10

A. Please provide a copy of Evergy's vegetation management policy and guidelines as referenced in Evergy's Motion to Dismiss paragraph 3.

B. Please provide a copy of the Transmission Maintenance Procedures (or strategies) as required by NERC standard FAC-003-3 paragraph B-R3.

Response:

Please consider this response as **CONFIDENTIAL** as it contains information concerning trade secrets, as well as private, technical, financial and business information.

- A. Attached file is an internal document that contains Evergy Transmission Vegetation Management information and guidance- EVERGY_MA_FAC003_P.01-Trans_Veg_Mgmt_Program_2020-01-01 CONFIDENTIAL
- B. Attached file contains Transmission Maintenance Procedures (or strategies)- EVERGY_MA_FAC003_P.01-Trans_Veg_Mgmt_Program_2020-01-01 CONFIDENTIAL

Attachments:

Q10_CONFIDENTIAL_EVERGY_MA_FAC003_P.01-Trans_Veg_Mgmt_Program_2020-01-01.pdf
Q10_Verification.pdf